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May 10, 2006

**VIA ELECTRONIC FILING**  
**REDACTED FOR PUBLIC INSPECTION**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: *Ex Parte* Notice of ACS of Anchorage, Inc., *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act, as amended, for Forbearance from Section 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area, WC Docket 05-281*

Dear Ms. Dortch:

On May 9, 2006, Leonard Steinberg of Alaska Communications Systems Group, Inc. ("ACS"), and Karen Brinkmann and Elizabeth Park of Latham and Watkins LLP, met with Aaron Goldberger and Dana Shaffer, legal advisors to Commissioner Tate, to discuss the above-referenced proceeding.

During the meeting, ACS described the extensive facilities-based local exchange competition in Anchorage. ACS's primary competitor, General Communication, Inc. ("GCI"), has cable and fiber facilities that are currently used, or could easily be used, to provide local exchange service to a significant number of both business and residential customers in each of the wire centers in the Anchorage study area. Thus, GCI and other competitive carriers would not be impaired without access to ACS's UNEs.

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Attached are copies of materials (redacted for public inspection) provided to Mr. Goldberger and Ms. Shaffer. Please contact the undersigned if you have any questions regarding this submission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Elizabeth R. Park', with a long horizontal flourish extending to the right.

Elizabeth R. Park

Enclosures

**ACS OF ANCHORAGE, INC.**  
**May 9, 2006 Wireline Competition Bureau Meeting**

**1. The Anchorage study area is the appropriate geographic market for UNE forbearance.**

- Anchorage has a small population and a uniform distribution of ACS and GCI facilities.
- Rates are averaged across the study area; carriers recover costs of serving high cost areas on an averaged basis.
  - GCI proposes to carve out as separate geographic markets high cost areas in which it deems facilities-deployment to be uneconomic; this defeats the goals of competitive deployment.
- GCI and ACS agree that wire centers are not correct geographic markets.

**2. Mass market and enterprise customers are the two appropriate product markets.**

- ACS and its competitors market the same services and prices to all mass market and enterprise customers throughout the study area.
- GCI's proposal for overly granular product market definitions lack support in either legal precedent or the realities of the Anchorage market.
  - MDU residents receive the same products at the same rates available throughout the study area. GCI has not demonstrated impairment in accessing MDU customers.
  - The vast majority of Anchorage enterprise customers order four or fewer access lines, and almost all are served over DS0 capacity lines.

**3. There is rampant competition throughout the Anchorage study area in markets for both mass market and enterprise customers.**

- GCI currently serves a majority of the retail market.
- GCI has a well-developed mass market network and high-capacity enterprise facilities.
- GCI's speed of deployment depends on business decisions regarding resource allocation.
- Although GCI claims its cable facilities are not "near" many of its customer locations, GCI does not disclose where its voice-enabled facilities are located.
  - A significant portion of business locations are near GCI's cable facilities, and GCI has demonstrated its ability to use WLL and point-to-point microwave technology.
  - GCI's fiber facilities and DOCSIS-compatible technology would enable GCI to serve additional business customers without UNEs.
- Intra-and intermodal networks in the Anchorage market provide additional facilities.

**4. Federal and state regulation will ensure that ACS's rates and practices are just, reasonable and nondiscriminatory.**

- ACS is not seeking forbearance from other Section 251 provisions that regulate ACS's wholesale services, including interconnection and resale.
- The RCA's nondominance order does not impact ACS's obligation to offer "just and reasonable rates," and maintains ACS's dominant status for a number of intrastate retail services, such as special access services.

# **REDACTED FOR PUBLIC INSPECTION**

## **ACS OF ANCHORAGE, INC. May 9, 2006 Wireline Competition Bureau Meeting**

### **Fact Summary**

#### **1. There is substantial facilities-based competition in Anchorage.**

- ACS estimates that as of March 31, 2006, GCI serves 49.4% of the Anchorage market, and ACS serves 48.0% of the market.
- As of March 31, 2006, ACS estimates that GCI provides local exchange service to approximately 88,500 retail lines; ACS serves 85,800 retail lines; and additional competitors serve 4,650 retail lines in Anchorage.
- GCI ordered 51,000 UNE loops in June 2005 but only 39,677 in March 2006.
- Several intermodal networks over which local voice services can be offered currently serve Anchorage. Vonage and AT&T Callvantage market VoIP services in Anchorage. VoIP services in Anchorage can be provided over Clearwire's wireless broadband network and GCI's extensive cable modem broadband network. GCI indicates that almost all its cable homes passed in Alaska are able to subscribe to cable modem service.

#### **2. Customers have access to facilities-based alternatives throughout the Anchorage market.**

- Per GCI, it is "economically feasible" for it to reach [REDACTED] of its residential customers and [REDACTED] of its business customers using its own network.
- GCI estimates that [REDACTED] of its residential customers and [REDACTED] of its business customers are "near" its cable plant.
- In its March 2006 earnings call, GCI stated that it was providing voice service on 22,000 DLPS lines in service at the end of 2005 and expects to convert 20,000 more customers to DLPS this year. Based on this projection, ACS estimates that, while 45% of GCI's customers are served over ACS UNE loops today, only 25% of its customers will be served over UNE loops at the end of 2006.
- In the earnings call, GCI's CEO stated that 90% of the homes passed by cable infrastructure in Alaska will be upgraded for voice service by the end of 2006.
- GCI fails to provide the locations of its voice-enabled facilities.
- There is evidence of both DLPS and wireless alternative networks in all five wire centers in Anchorage.

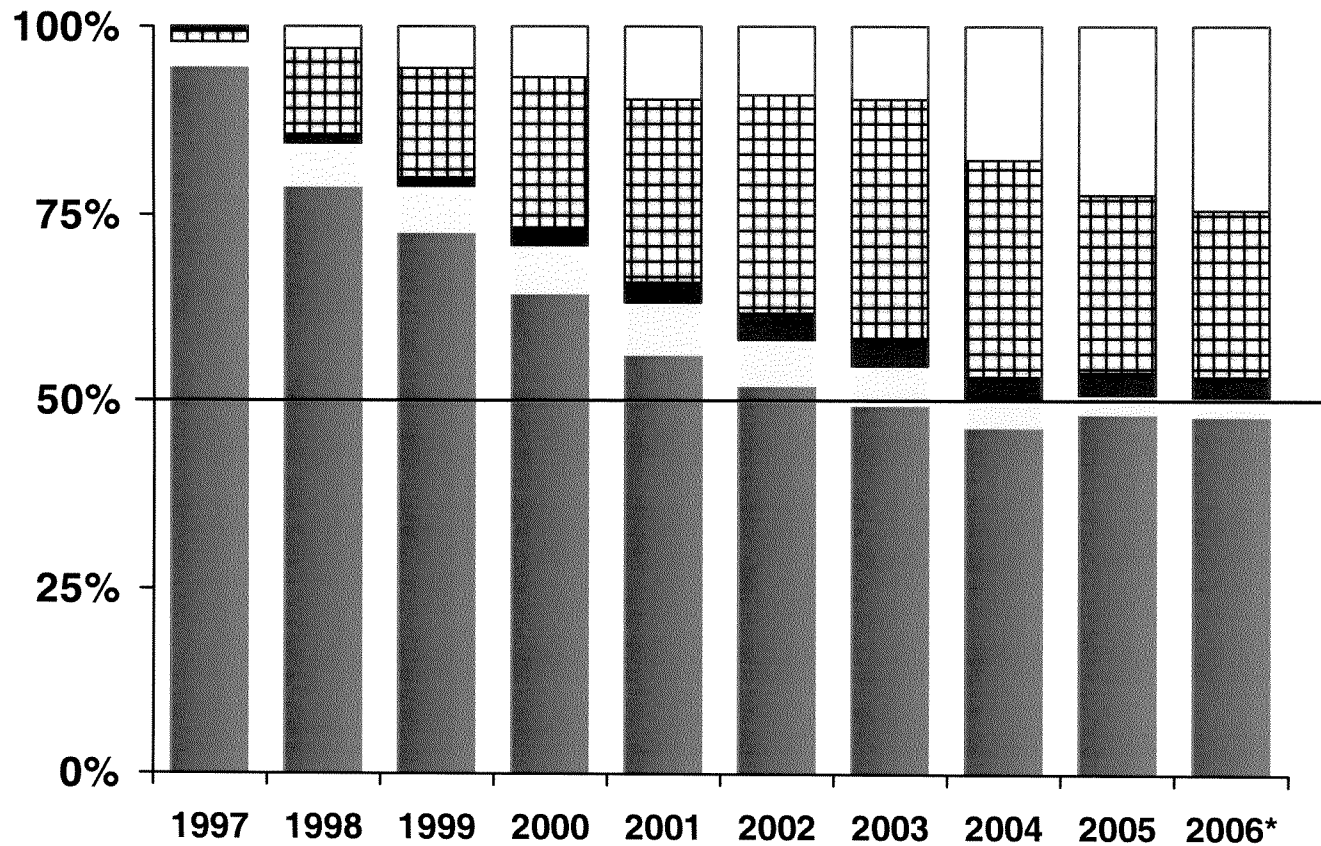


Petition for Forbearance from UNE Obligations in  
Anchorage; WC Docket No. 05-281  
May 2006

Leonard Steinberg  
General Counsel  
907-297-3105

# ***Anchorage is the benchmark for the Telecom Act's success***

■ ACS -Retail Lines    Other-TSR    ■ GCI -TSR    ▨ GCI -UNE-L    □ GCI -Bypass & DLPS



\* As of March 31, 2006

***...and highlights the need to grant ACS's request for forbearance from UNE obligations in Anchorage***

## ***Grant of forbearance is the appropriate form of relief***

- The Commission recognizes that forbearance relief from UNEs may be appropriate for ILECs in smaller markets where the *Triennial Review Remand Order* non-impairment tests are not met (*Triennial Review Remand Order* at para. 39; *Qwest Omaha Order* at note 177)
- The Commission has found significant and sustainable competition in markets with two facilities-based providers (*Qwest Omaha Order*)
- The Commission should consider the existence of intermodal networks as part of its forbearance analysis; the Commission has found that intermodal services can be substitutes for local, long-distance and bundled local/long-distance services (*Verizon-MCI Merger Order* at paras. 84-97; *Sprint-Nextel Merger Order* at para. 141)

## ***It is time for regulation to cede to market-based realities***

- The FCC must recognize the inroads made by competitive entrants
  - Even with the self-imposed, measured implementation of DLPS (Digital Local Phone service, aka “cable telephony”), GCI forecasts that it will have almost three-quarters of its Anchorage local customers on its own facilities by YE 2006 (GCI’s 4Q05 Earnings Call states that it had 22K DLPS lines in service at the end of 2005 and plans to add another 20K DLPS lines, primarily in Anchorage, during 2006; GCI also exclusively serves a number of customers today over its own fiber and copper facilities)
- There are no market barriers – there are only costs of doing business
  - When asked about the bottlenecks of deploying cable telephony at a hastened pace, Ron Duncan, CEO of GCI, replied “All of them can be cured by money.” (GCI’s 2Q04 Earnings Call)
  - When asked how many of GCI’s 215,000 cable homes in Alaska could be offered GCI’s local phone service, Ron Duncan responded that he “expect[s] the facilities to be in place and the plant to be upgraded for probably 90% of those 215,000 homes by the end of this year.” (Ron Duncan, GCI’s 4Q05 Earnings Call)



## ***GCI's cable telephony is true intermodal competition***

- GCI has the expertise and resources to provide local telecom services over its own facilities
  - “(W)hen (customers) convert to the DLPS, they are getting a superior quality service. It converts from an analog loop to a digital loop.” (Ron Duncan, GCI's 3Q04 Earnings Call)
  - The Regulatory Commission of Alaska (“RCA”) “had approved our application to provide local telephone service in five existing service areas and competition with the existing service providers, which included 15 additional communities . . . [and] recently authorized us to provide service in [six additional communities using only our cable facilities].” (John Lowber, CFO of GCI, GCI's 4Q05 Earnings Call)
  - GCI serves certain customers on an exclusive basis – ACS has no ability to compete for those customers unless GCI agrees to give ACS access to GCI's loop facilities serving those customers

## ***Commercial negotiation of UNEs is in ACS's best interest***

- As GCI completes the transition to its own cable telephony facilities, ACS loses UNE income
- ACS has demonstrated its willingness and ability to negotiate unbundling arrangements with GCI – It has signed an agreement through 2007 to provide UNEs to GCI in its rural markets at negotiated prices notwithstanding regulatory relief that might be granted in the interim
- It is in ACS's financial self-interest to negotiate market-based terms for UNEs in Anchorage

## ***Competitors are not impaired without access to UNEs***

- GCI's extensive facilities reach almost all residential customers and a significant portion of business customers in Anchorage
- Several intermodal networks over which local voice services can be offered currently serve Anchorage; VoIP service can be provided over wireless broadband and GCI's extensive cable modem broadband networks
- Other provisions of Section 251 that regulate ACS's wholesale services, as well as continued oversight by the RCA, will ensure that ACS's rates and practices are just, reasonable and nondiscriminatory